Obligation of Appropriations

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A. Introduction: Nature of an Obligation

You, as an individual, use a variety of procedures to spend your money. Consider the following transactions:

(1) You walk into a store, make a purchase, and pay at the counter with cash or check.

(2) You move to another counter and make another purchase with a credit card. No money changes hands at the time, but you sign a credit form which states that you promise to pay upon being billed.

(3) You call the local tree surgeon to remove some ailing limbs from your favorite sycamore. He quotes an estimate and you arrange to have the work done. The tree doctor arrives while you are not at home, does the work, and slips his bill under your front door.

(4) You visit your family dentist to relieve a toothache. The work is done and you go home. No mention is made of money. Of course, you know that the work wasn't free and that the dentist will bill you.

(5) You now visit your family lawyer to sue the dentist and the tree surgeon. The lawyer takes your case and you sign a contingent fee contract in which you agree that the lawyer's fee will be one-third of any amounts recovered.

Numerous other variations could be added to the list but these are sufficient to make the point. Case (1) is a simple cash transaction. The legal liability to pay and the actual disbursement of money occur simultaneously. Cases (2) through (5) all have one essential thing in common: You first take some action which creates the legal liability to pay-that is, you "obligate" yourself to pay-and the actual disbursement of money follows at some later time. The obligation occurs in a variety of ways, such as placing an order or signing a contract.

The government spends **money** in much the same fashion except that it is subject to many more statutory restrictions. The simple "cash transaction" or "direct outlay" involves a simultaneous obligation and disbursement and represents a minor portion of government expenditures. The major portion of appropriated funds are first obligated and then expended. The subsequent disbursement "liquidates" the obligation. Thus, an agency "uses" appropriations in two basic ways-direct expenditures (disbursements) and obligations.

There is no legal requirement for you as an individual to keep track of your "obligations." For the government, there is.

The concept of "obligation" is central to appropriations law. This is because of the principle, one of the most fundamental, that art obligation must be charged against the relevant appropriation in accordance with the rules relating to purpose, time, and amount. The term "available for obligation" is used throughout this publication to refer to availability as to purpose, time, and amount. This chapter will explore exactly what art obligation is.

It would be nice to start with an all-inclusive and universally applicable definition of "obligation." Unfortunately, because of the immense variety of transactions in which the government is involved, such a definition does not exist. In fact, the Comptroller General has noted that formulating an all-inclusive definition would be impracticable, if not impossible. B-116795, June 18, 1954. As stated in B-192282, April 18, 1979, GAO—

> "has generally avoided a universally applicable legal definition of the term 'obligation,' and has instead analyzed the nature of the particular transaction at issue to determine whether an obligation has been incurred."

At first glance, this passage appears to beg the question. (How can you determine whether an obligation has been incurred if you don't first define what an obligation is?) It is perhaps more accurate to say that GAO has defined "obligation" only in the most general terms, and has applied the concept to individual transactions on a case-by-case basis.

The most one finds in the decisions are general statements referring to an obligation in such terms as "a definite commitment which creates a legal liability of the Government for the payment of appropriated funds for goods and services ordered or received." B-116795, June 18, 1954. See also 21 Comp. Gen. 1162, 1163 (1941) (circular letter); B-222048, February 10, 1987; B-82368, July 20, 1954; B-24827, April 3, 1942; B-190, June 12, 1939. From the earliest days, the Comptroller General has cautioned that the obligating of appropriations must be "definite and certain." A-5894, December 3, 1924.

Thus, in very general and simplified terms, an "obligation" is some action that creates a liability or definite commitment on the part of the government to make a disbursement at some later time.

An advance of funds to a working fund does not in itself serve to obligate the funds. See 23 Comp. Gen. 668 (1944); B-180578-O. M., September 26, 1978. The same result holds for funds transferred to a special "holding account" established for administrative convenience. B-1 18638, November 4, 1974 (appropriations for District of Columbia Public Defender Service under control of the Administrative Office of the U.S. Courts are not obligated by transfer to a "Judicial Trust Fund" established by the Administrative Office).

The typical question on obligations is framed in terms of when the obligation may or must be "recorded," that is, officially charged against the spending agency's appropriations. Restated, what action is necessary or sufficient to create an obligation? This is essential in determining what fiscal year to charge, with all the consequences that flow from that determination. It is also essential to the broader concern of congressional control over the public purse.

Before proceeding with the specifics, two general points should be noted:

- For appropriations law purposes, the term "obligation" includes both matured and unmatured commitments. A matured commitment is a legal liability that is currently payable. An unmatured commitment is a liability which is not yet payable but for which a definite commitment nevertheless exists, For example, a contractual liability to pay for goods which have been delivered and accepted has "matured." The liability for monthly rental payments under a lease is largely unmatured although the legal liability covers the entire rental period. Both types of liability are "obligations." The fact that an unmatured liability may be subject to a right of cancellation does not negate the obligation. A-97205, February 3, 1944, at 9–10. An "unmatured liability" as described in this paragraph is different from a "contingent liability" as discussed later in this chapter.
- The obligation takes place when the definite commitment is made, even though the actual payment may not take place until the following fiscal year. 56 Comp. Gen. 351 (1977); 23 Comp. Gen. 862 (1944).

B. Criteria for Recording Obligations (31 U.S.C. § 1501)

The overrecording and the underrecording of obligations are equally improper. Overrecording (recording as obligations items which are not) is usually done to prevent appropriations from expiring at the end of a fiscal year. Underrecording (failing to record legitimate obligations) makes it impossible to determine the precise status of the appropriation and may result in violating the Antideficiency Act. A 1953 decision put it this way:

"In order to determine the status of **appropriations, both from the viewpoint of management and the Congress, it is essential that obligations be recorded in the accounting records on a factual and consistent basis throughout the Government. Only by the following of sound practices in this regard can data on existing obligations serve to indicate program accomplishments and be related to the amount of additional appropriations required."** 32 Comp. Gen. 436,437 (1953).

The standards for the proper recording of obligations are found in 31 U.S.C. § 1501(a), originally enacted as section 1311 of the Supplemental Appropriation Act of 1955 (68 Stat. 830). A Senate committee has described the origin of the statute as follows:

'Section 1311 of the Supplemental Appropriation Act of 1955 resulted from the difficulty encountered by the House Appropriations Committee in obtaining reliable figures on obligations from the executive agencies in connection with the budget review. It was not uncommon for the committees to receive two or three different sets of figures as of the same date. This situation, together with rather vague explanations of certain types of obligations particularly in the military departments], caused the House Committee on Appropriations to institute studies of agency obligating practices.

....

"The result of these examinations laid the foundation for the committee's conclusion that loose practices had grown up in various agencies, particularly in the recording of obligations in situations where no real obligation existed, and that by reason of these practices the Congress did not have reliable information in the form of accurate obligations on which to determine an agency's future requirements. To correct this situation, the committee, with the cooperation of the General Accounting Office and the Bureau of the Budget, developed what has become the statutory criterion by which the validity of an obligation is determined. . . ."[1]

Thus, the primary purpose of 31 U.S.C. § 1501 is to ensure that agencies record only those transactions which meet specified

[1] Senate Committee on Government Operations, Financial Management in the Federal Government, S. Dec. No. 11, 87th Cong., 1st Sess. 85 (1961).

standards for legitimate obligations. 54 Comp. Gen. 962,964 (1975); 51 Comp. Gen. 631,633 (1972); B-192036, September 11, 1978.[2]

Subsection (a) of 31 U.S.C. § 1501 prescribes specific criteria for recording obligations. The subsection begins by stating that "[a]n amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of. . . ." Subsection (a) then goes onto list nine criteria for recording obligations. Note that the statute requires "documentary evidence" to support the recording in each instance. In one sense, these nine criteria taken together may be said to comprise the "definition" of an obligation.[3]

If a given transaction does not meet any of the criteria, then it is not a proper obligation and may not be recorded as one. Once one of the criteria is met, however, the agency not only may but must at that point record the transaction as an obligation. While 31 U.S.C. § 1501 does not explicitly state that obligations must be recorded as they arise or are incurred, it follows logically from an agency's responsibility to comply with the Antideficiency Act. GAO has made the point in reports and decisions in various contexts. E.g., Substantial Understatement of Obligations for Separation Allowances for Foreign National Employees, B-179343, October 21, 1974, at 6; FGMSD-75-20, February 13,1975, at 3 (letter report); 65 Comp. Gen. 4,6 (1985); B-226801, March 2, 1988; B-192036, September 11, 1978; A-97205, February 3, 1944, at 10.

It is important to emphasize the relationship between the existence of an obligation and the act of recording. Recording evidences the obligation but does not create it. If a given transaction is not sufficient to constitute a valid obligation, recording it will not make it one. E.g., B-197274, February 16, 1982 ("reservation and notification" letter held not to constitute an obligation, act of recording notwithstanding, where letter did not impose legal liability on government and

[2]Although 31 U.S.C. § 1501 does not expressly apply to the government of the District of Columbia, GAO has expressed the view that the same criteria should be followed. B-180578-O.M., September 26, 1978. This is because the proper recording of obligations is the only way to assure compliance with 31 U.S.C. § 1341, a portion of the Antideficiency Act, which does expressly apply to the government of the District of Columbia. District of Columbia Self-Government and Governmental Reorganization Act (so-called "Home Rule" Act), Pub. L. No. 93-198, § 603(e), 87 Stat. 774,816 (1973).

[3]Financial Management in the Federal Government, supra note 1, at 86.

subsequent formation of contract was within agency's control). Conversely, failing to record a valid obligation in no way diminishes its validity or affects the fiscal year to which it is properly chargeable. E.g., B-226782, October 20, 1987 (letter of intent, executed in FY 1985 and found to constitute a contract, obligated FY 1985 funds, notwithstanding agency's failure to treat it as an obligation); 63 Comp. Gen. 525 (1984); 38 Comp. Gen. 81,82-83 (1958).

The precise amount of the government's liability should be recorded as the obligation where that amount is known. However, where the precise amount is not known at the time the obligation is incurred, the obligation should be recorded on the basis of the agency's best estimate. E.g., 56 Comp. Gem 414, 418 (1977) and cases cited therein; 21 Comp. Gen. 574 (1941). See also OMB Circular No. A-34, $322.1,22.2. Where an estimate is used, the basis for the estimate must be shown on the obligating document. As more precise data on the liability becomes available, the obligation must be periodically adjusted. GAO, Policy and Procedures Manual for Guidance of Federal Agencies, title 7,$ 3.4.D (1990).

Retroactive adjustments to recorded obligations, like the initial recordings themselves, must be supported by documentary evidence. The use of statistical methods to make adjustments "lacks legal foundation if the underlying transactions cannot be identified and do not support the calculated totals." GAO report, Financial Management: Defense Accounting Adjustments for Stock Fund Obligations Are Illegal, GAO/AFMD-87-1 (March 11, 1987) at 6; B-236940, October 17, 1989.

A related concept is the allocation of obligations for administrative expenses (utility costs, computer services, etc.) between or among programs funded under separate appropriations. There is no rule or formula for this allocation apart from the general prescription that the agency must use a supportable methodology. Merely relying on the approved budget is not sufficient. See GAO report, Financial Management: Improvements Needed in OSMRE's Method of Allocating Obligations, GAO/AFMD-89-89 (July 1989). An agency may initially charge common-use items to a single appropriation as long as it makes the appropriate adjustments from other benefiting appropriations before or as of the end of the fiscal year. 31 U.S.C. $1534. The allocation must be in proportion to the benefit. 70 Comp. Gen. 592 (1991).

Further procedural guidance may be found in OMB Circular No. A-34 (Instructions for Budget Execution); the Treasury Financial Manual; and GAO's Policy and Procedures Manual for Guidance of Federal Agencies. For the most part, the statutory criteria in 31 U.S.C. § 1501(a) reflect standards that had been developed in prior decisions of the Comptroller General over the years. See, e.g., 18 Comp. Gen. 363 (1938); 16 Comp. Gen. 37 (1936). The remainder of this section will explore the nine specific recording criteria.

1. Subsection (a)(1): Contracts

Subsection (a)(1) of 31 U.S.C. § 1501 establishes minimum requirements for recording obligations for contracts. Specifically, there must be documentary evidence of—

"(l) a binding agreement between an agency and another person (including an agency) that is—

"(A) in writing, in a way and form, and for a purpose authorized by law; and

"(B) executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided."

As seen in Chapter 5, the general rule for obligating fiscal year appropriations by contract is that the contract imposing the obligation must be made within the fiscal year sought to be charged and must meet a bona fide need of that fiscal year. E.g., 37 Comp. Gen. 155 (1957). This discussion will center on the timing of the obligation from the perspective of 31 U.S.C. § 1501(a)(1).

Subsection (a)(1) actually imposes several different requirements (1) a binding agreement; (2) in writing; (3) for a purpose authorized bylaw; (4) executed before the expiration of the period of obligational availability; and (5) a contract calling for specific goods, real property, work, or services.

a. Binding Agreement

While the agreement must be legally binding (offer, acceptance, consideration, made by authorized official), it does not have to be the final "definitized" contract. The Legislative history of subsection (a)(1) makes this clear. The following excerpt is taken from the conference report:

"Section 131 l(a)(l) precludes the recording of an obligation unless it is supported by documentary evidence of a binding agreement between the parties as specified therein. It is not necessary, however, that the binding agreement be the final formal contract on any specified form. The primary purpose is to require that there be an offer and an acceptance imposing liability on both parties. For example, an authorized order by one agency on another agency of the Government, if accepted by the latter and meeting the requirement of specificity, etc., is sufficient. Likewise, a letter of intent accepted by a contractor, if sufficiently specific and definitive to show the purposes and scope of the contract finally to be executed, would constitute the binding agreement required."[4]

The following passage from 42 Comp. Gen. 733,734 (1963) remains a useful general prescription:

"The question whether Government funds are obligated at any specific time is answerable only in terms of an analysis of written arrangements and conditions agreed to by the United States and the party with whom it is dealing If such analysis discloses a legal duty on the part of the United States which constitutes a legal liability or which could mature into a legal liability by virtue of actions on the part of the other Party beyond the control of the United States, an obligation of funds may generally be stated to exist."

In 35 Comp. Gen. 319 (1955) and more recently in 59 Comp. Gen. 431 (1980), the Comptroller General set forth the factors that must be present in order for a binding agreement to exist for purposes of 31 U.S.C. § 1501(a)(1) with respect to contracts awarded under competitive procedures:

1. Each bid must have been in writing.

2. The acceptance of each bid must have been communicated to the bidder in the same manner as the bid was made. If the bid was mailed, the contract must have been placed in the mails before the close of the fiscal year. If the bid was delivered other than by mail, the contract must have been delivered in like manner before the end of the fiscal year.

3. Each contract must have incorporated the terms and conditions of the respective bid without qualification. Otherwise, it must be viewed as a counteroffer and there would be no binding agreement until accepted by the contractor.

[4]H.R. Rep. No. 2663, 83d Cong., 2d Sess. 18 (1954), quoted in B-118654, August 10, 1965.

To illustrate, where the agency notified the successful bidder of the award by telephone near the end of FY 1979 but did not mail the contract document until FY 1980, there was no valid obligation of FY 1979 funds. 59 Comp. Gen. 431 (1980). See also 35 Comp. Gen. 319 (1955).[5] A document is considered "mailed" when it is placed in the custody of the Postal Service (given to postman or dropped in mailbox or letter chute in office building); merely delivering the document to an agency messenger with instructions to mail it is insufficient. 59 Comp. Gen. at 433.

Similarly, there was no recordable obligation of FY 1960 funds where the agency erroneously mailed the notice of award to the wrong bidder and did not notify the successful bidder until the first day of FY 1961.40 Comp. Gen. 147 (1960),

It is important to note that, in the above cases, the obligation was invalid only with respect to the fiscal year the agency wanted to charge. The agency could still proceed to finalize the obligation but would have to charge funds current in the subsequent fiscal year. 59 Comp. Gen. at 433; 40 Comp. Gen. at 148.

A mere request for an additional allocation with no indication of acceptance does not create a recordable obligation. 39 Comp. Gen. 829 (1960). Similarly, a work order or purchase order maybe recorded as an obligation only where it constitutes a binding agreement for specific work or services. 34 Comp. Gen. 459 (1955).

A "letter of intent" is a preliminary document that mayor may not constitute an obligation. At one extreme, it maybe nothing more than an "agreement to agree" with neither party bound until execution of the formal contract. E.g., B-201035, February 15, 1984, at 5. At the other extreme, it may contain all the elements of a contract, in which event it will create binding obligations. The crucial question is whether the parties intended to be bound, determinable primarily from the language actually used. Saul Bass &Associates v. United States, 505 F.2d 1386 (Ct. Cl. 1974). For a good example of a letter

[5]This is a relatively rare situation in which the early decisions were somewhat more "liberal." E.g., A-28429, August 27, 1929 (FY 1929 funds held obligated where bids were solicited and received and the lowest bid authorized to be accepted during FY 1929 although formal contract not executed until early FY 1930). The explicit language of 31 U.S.C. § 1601 would preclude this result today, although use of a preliminary letter contract, discussed later in the text, would at least partially solve the problem.

of intent creating contractual obligations, see B-226782, October 20, 1987.

A letter of intent which amounts to a contract is also called a "letter contract." In the context of government procurement, it is used most commonly when there is insufficient time to prepare and execute the full contract before the end of the fiscal year. As indicated in the legislative history quoted earlier, a "letter of intent" accepted by the contractor may form the basis of an obligation if it is sufficiently specific and definitive to show the purpose and scope of the contract. 21 Comp. Gen. 574 (1941); B-127518, May 10, 1956. Letters of intent should be used "only under conditions of the utmost urgency. " 33 Comp. Gen. 291,293 (1954]. Under the Federal Acquisition Regulation, letter contracts may be used--

"when (1) the Government's interests demand that the contractor be given a binding commitment so that work can start immediately and (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement."

FAR, 48 C.F.R. §16.603-2(a).

The amount to be obligated under a letter contract is the government's maximum liability under the letter contract itself, without regard to additional obligations anticipated to be included in the definitive contract or, restated, the amount necessary to cover expenses to be incurred by the contractor prior to execution of the definitive contract. The obligation is recorded against funds available for obligation at the time the letter contract is issued. 34 Comp. Gen. 418,421 (1955); B-197274, September 23, 1983; B-197274, February 16, 1982; B-127518, May 10, 1956. See also FAR, 48 C.F.R. §§16.603-2(d) and 16.603-3(a).

Once the definitive contract is executed, the government's liability under the letter contract is merged into it. If definitization does not occur until the following fiscal year, the definitive contract will obligate funds of the latter year, usually in the amount of the total contract price less an appropriate deduction for obligations under the letter contract. B-197274, September 23, 1983. In this regard, the cited decision states, at page 5:

"The definitized contract then supports obligating against the appropriation current at the time it is entered into since it is, in fact, a bona fide need of that year. The amount of the definitized contract would ordinarily be the total contract costless

either the actual costs incurred under the letter contract (when known) or the amount of the maximum legal liability permitted by the letter contract (when the actual costs cannot be determined).*

Letter contracts should be definitized within 180 days. FAR, 48 C.F.R. §16.603-2(c). Also, letter contracts should not be used to record excess obligations as this distorts the agency's funding picture. See GAO report, Contract Pricing: Obligations Exceed Definitized Prices on Unpriced Contracts, GAO/NSIAD-86-128 (May 1986).

b. Contract "in Writing"

Although the binding agreement under 31 U.S.C. §1501(a)(1) must be "in writing," the "writing" is not necessarily limited to words on a piece of paper. The traditional mode of contract execution is to affix original handwritten signatures to a document (paper) setting forth the contract terms, and this is likely to remain the norm for the foreseeable future. Change is in the winds, however, and traditional interpretations are being reassessed in light of advancing computer technologies. In 1983, GAO's legal staff, in an internal memorandum to one of GAO's audit divisions, took note of modern legal trends and advised that the "in writing" requirement could be satisfied by computer-related media which produce tangible recordings of information, such as punch cards, magnetic cards, tapes, or disks. B-208863 (2)-0. M., May 23,1983.

Eight years later, the Comptroller General issued his first formal decision on the topic, 71 Comp. Gen. 109 (1991). The National Institute of Standards and Technology asked whether federal agencies could use certain Electronic Data Interchange (EDI) technologies to create valid contractual obligations for purposes of 31 U.S.C. §1501(a). Yes, replied the Comptroller, as long as there are adequate safeguards and controls to provide no less certainty and protection of the government's interests as under a "paper and ink" method. The decision states:

We conclude that EDI systems using message authentication codes which follow NIST's Computer Data Authentication Standard (Federal Information Processing

[6]In the opinion of the editors, it is questionable whether, for obligation purposes, limiting the deduction to actual costs where known should be viewed as a general ride. Where the obligation under the letter contract is not excessive and is otherwise proper (meets bona fide needs teat, etc.), it is arguable that the full obligation under the letter contract, even if not fully performed prior to definitization, should nevertheless stand as an obligation against the prior year's appropriation.

Standard (FIPS) 113) [footnote omitted] or digital signatures following NIST's Digital Signature Standard, as currently proposed, can produce a form of evidence that is acceptable under section 1501."

While there may be some room for interpretation as to what constitutes a "writing," the writing, in some acceptable form, must exist. Under the plain terms of the statute, an oral agreement may not be recorded as an obligation. In United States v. American Renaissance Lines, Inc., 494 F.2d 1059 (D.C. Cir. 1974), cert. denied, 419 U.S. 1020, the court found that 31 U.S.C. §1501(a)(1) "establishes virtually a statute of frauds" for the government' and held that neither party can judicially enforce an oral contract in violation of the statute.

However, the Court of Claims and its successor, the Claims Court, have taken the position that 31 U.S.C. §1501(a)(1) does not bar recovery "outside of the contract" where sufficient additional facts exist for the court to infer the necessary "meeting of minds" (contract implied-in-fact). Narva Harris Construction Corp. v. United States, 574 F.2d 508 (Ct. Cl. 1978); Johns-Manville Corp. v. United States, 12 Cl. Ct. 1, 19–20 (1987). Cf. Kinzley v. United States, 661 F.2d 187 (Ct. Cl. 1981). In addition, according to the Claims Court, it is also possible to have an express oral contract if the required elements are present— "mutuality of intent to be bound, definite offer, unconditional acceptance, and consideration"—and if the government official involved had actual authority to bind the government. Edwards v. United States, 22 Cl. Ct. 411, 420 (1991).

These would be examples of subsequently imposed liability where the agency did not record—and lawfully could not have recorded—an obligation when the events giving rise to the liability took place. If a contractor received a judgment in this type of situation, the obligational impact on the "contracting agency" would depend on whether the case was subject to the Contract Disputes Act. If the Act applies, the judgment would be payable initially from the permanent judgment appropriation (31 U.S.C. § 1304), to be reimbursed by the agency from currently available appropriations. If the Act does not apply, the judgment would be paid from the judgment appropriation

[7] A "statute of frauds" is a law requiring contracts to be in writing in order to be enforceable. Mc@ if not all, states have some version of such a statute. Strictly speaking, as the Comptroller General has noted, there is no federal statute of frauds. 39 Comp. Gen. 829,831 (1960). See also 55 Comp. Gen. 833 (1976).

without reimbursement, and there would thus be no obligational impact on the agency.

In B-118654, August 10, 1965, GAO concluded that a notice of award signed by the contracting officer and issued before the close of the fiscal year did not satisfy the requirements of 31 U.S.C. § 1501(a)(1) where it incorporated modifications of the offer as to price and other terms which had been agreed to orally during negotiations. The reason is that there was no evidence in writing that the contractor had agreed to the modifications. GAO conceded, however, that the agency's argument that there was documentary evidence of a binding agreement for purposes of section 1501(a)(1) did have some merit. A similar issue arose in a 1977 case. While the decision implies (without mention of B-118654) that an obligation based on an award letter which incorporated telephone conversations relating to pricing might not be defeated if otherwise sufficient to satisfy 31 U.S.C. § 1501(a)(1), the potential defect in any event would not afford a basis for a third party (in this case a protesting unsuccessful offeror) to object to the contract's legality. 56 Comp. Gen. 768,775 (1977).

c. Requirement of Specificity

The statute requires documentary evidence of a binding agreement for specific goods or services. An agreement that fails this testis not a valid obligation.

For example, a State Department contract under the Migration and Refugee Assistance Program establishing a contingency fund "to provide funds for refugee assistance by any means, organization or other voluntary agency as determined by the Supervising Officer" did not meet the requirement of specificity and therefore was not a valid obligation. B-147196, April 5, 1965.

Similarly, a purchase order which lacks a description of the products to be provided is not sufficient to create a recordable obligation. B-196109, October 23, 1979. In the cited decision, a purchase order for "regulatory, warning, and guide signs based on information supplied" on requisitions to be issued did not validly obligate FY 1978 funds where the requisitions were not sent to the supplier until after the close of FY 1978.

d. Invalid Award/Unauthorized Commitment

Where a contract award is determined to be invalid, the effect is that no binding agreement ever existed as required by 31 U.S.C.

§1501(a)(1) and therefore there was no valid obligation of funds. 38 Comp. Gen. 190 (1958); B-157360, August 11, 1965. Under more recent authorities discussed in Chapter 5, however, the original obligation is not extinguished for all purposes, and the funds remain available post-expiration to fund a valid "replacement contract." 70 Comp. Gen. 230 (1991); 68 Comp. Gen. 158 (1988). Where the invalidity is determined under a bid protest, which will presumably cover most such instances, the extended availability described in the GAO decisions is statutorily defined as 90 working days after the final ruling on the protest. 31 U.S.C. $1558. Thus, cases like 38 Comp. Gen. 190 must be regarded as modified to this extent. Of course, the obligation does not survive post-expiration for anything other than a valid replacement contract.

Where the Comptroller General awards bid preparation costs to a successful protester under authority of 31 U.S.C. § 3554(c), payment should be charged to the agency's procurement appropriations current at the time GAO issued its decision. If the amount must be verified prior to payment, the agency should record an estimated obligation, using GAO's decision as the obligating document. Upon verification, the obligation is adjusted up or down as necessary, on the basis of the documents substantiating the amount. B-199368.4, January 19, 1983 (non-decision letter).

Claims resulting from unauthorized commitments raise obligation questions in two general situations. If the circumstances surrounding the unauthorized commitment are sufficient to give rise to a contract implied-in-fact, it maybe possible for the agency to ratify the unauthorized act. If the ratification occurs in a subsequent fiscal year, the obligation is chargeable to the prior year, i.e., the year in which the need presumably arose and the claimant performed. B-208730, January 6, 1983. If ratification is not available for whatever reason, the only remaining possibility for payment is a quantum meruit recovery under a theory of contract implied-in-law. The quantum meruit theory permits payment in limited circumstances even in cases where there was no valid obligation, for example, where the contractor has made partial delivery operating under what he believed to be a valid contract. B-1 18428, September 21, 1954. The obligational impact is the same as for ratification-payment is chargeable to the fiscal year in which the claimant performed. B-210808, May 24, 1984; B-207557, July 11, 1983.

e. Variations in Quantity to Be Furnished

In some types of contracts, the quantity of goods to be furnished or services to be performed may vary. The quantity maybe indefinite or it maybe stated in terms of a definite minimum with permissible variation. Variations may be at the option of the government or the contractor. The obligational treatment of this type of contract depends on the exact nature of the contractual liability imposed on the government.

Before proceeding, it is important to define some terms. A requirements contract is one in which the government agrees to purchase all of its needs for the particular item or service during the contract period from the contractor, and the contractor agrees to fill all such needs. An indefinite-quantity contract is one in which the contractor agrees to supply whatever quantity the government may order, within limits, with the government under no obligation to use that contractor for all of its requirements. FAR, 48 C.F.R. §§16.503(a), 16.504(a); Mason v. United States, 615 F.2d 1343 (Ct. Cl. 1980); Hemet Valley Flying Service Co. v.' United States, 7 Cl. Ct. 512, ' 51 5–16 (1985). Under either type of contract, the government orders specific quantities from time to time by issuing a document variously termed a work order, task order, delivery order, etc.

In a requirements contract, the government must state a realistic and good faith estimate of its total anticipated requirements, based on the best and most current information available. 48 C.F.R. §16.503(a)(1); 13-190855, March 31, 1978; B-188426, September 20, 1977. Maximum and minimum quantities may be specified but are not required. 48 C.F.R. §16.503(a)(2); B-226992.2, July 13, 1987; Unlimited Enterprises, Export-import, Inc., ASBCA No. 34825,88-3 BCA 1120,908 (1988). Needs must relate to the contract period. 21 Comp. Gen. 961,964 (1942).

If, in the exercise of good faith, the anticipated requirements simply do not materialize, the government is not obligated to purchase the stated estimate or indeed, if no requirements arise, to place any orders with the contractor beyond any required minimum. AGS-Genesys Corp., ASBCA No. 35302, 89-2 BCA ¶ 21,702 (1989); World Contractors, Inc., ASBCA No. 20354,75-2 BCA 1111,536 (1975); 47 Comp. Gen. 365,370 (1968), The contractor assumes the risk that non-guaranteed requirements may fall short of expectations, and has no claim for a price adjustment if they do. Medart, Inc. v. Austin, 967 F.2d 579 (Fed. Cir. 1992); 37 Comp. Gen. 688 (1958). If,

however, the government attempts to meet its requirements elsewhere, including the development of in-house capability, or if failure to place orders with the contractor for valid needs is otherwise found to evidence lack of good faith, liability will result. E.g., Torncello v. United States, 681 F.2d 756 (Ct. Cl. 1982); Cleek Aviation v. United States, 19 Cl. Ct. 552 (1990); Viktoria Transport GmbH & Co., ASBCA No. 30371,88-3 BCA ¶ 20,921 (1988); California Bus Lines, ASBCA No. 19732,75-2 BCA ¶ 11,601 (1975); Henry Angelo & Sons, Inc., ASBCA No. 15082, 72-1 BCA ¶ 9356 (1972); B-182266, April 1,1975.

An indefinite-quantity contract, under current regulations, must include a minimum purchase requirement which must be more than nominal. 48 C.F.R. § 16.504(a). An indefinite-quantity contract without a minimum purchase requirement is regarded as illusory and unenforceable. It is no contract at all. Mason v. United States, 615 F.2d at 1346 n.5; Torncello v. United States, 681 F.2d at 761; Modem Systems Technology Corp. v. United States, 24 Cl. Ct. 360 (1991). Apart from the specified minimum, the government is free to obtain its requirements from other contractors. 'Government Contract Services, Inc., GSBCA No. 8447,88-1 BCA ¶ 20,255 (1987); Alta Construction Co., PSBCA NO. 1395,87-2 BCA 1119,720 (1987).

What does all this signify from the perspective of obligating appropriations? As we noted at the outset, the obligational impact of a variable quantity contract depends on exactly what the government has bound itself to do. A fairly simple generalization can be deduced from the decisions: In a variable quantity contract (requirements or indefinite-quantity), any required minimum purchase must be obligated when the contract is executed; subsequent obligations occur as work orders or delivery orders are placed, and are chargeable to the fiscal year in which the order is placed.

Thus, in a variable quantity contract with no guaranteed minimum-or any analogous situation in which there is no liability unless and until an order is placed–there would be no recordable obligation at the time of award. 63 Comp. Gen. 129 (1983); 60 Comp. Gen. 219

(1981); 34 Comp. Gen. 459,462 (1955); B-124901, October 26, 1955 ("call contract").[8] Obligations are recorded as orders are placed.

The same approach applies to a contract for a freed quantity in which the government reserves an option to purchase an additional quantity. The contract price for the freed quantity is an obligation at the time the contract is entered into; the reservation of the option ripens into art obligation only if and when the government exercises the option. 19 Comp. Gen. 980 (1940).

A more recent application of these concepts is B-192036, September 11, 1978. The National Park Service entered into a construction contract for the development of a national historic site. Part of the contract price was a "contingent sum" of $25,000 for "Force Account Work," described in the contract as miscellaneous items of a minor nature not included in the bid schedule. No "Force Account Work" was to be done except under written orders issued by the contracting officer. Since a written order was required for the performance of work, no part of the $25,000 could be recorded as an obligation unless and until such orders were issued and accepted by the contractor. That portion of the master contract itself which provided for the Force Account Work was not sufficiently specific to create an obligation.

In a 1955 case, the Army entered into a contract for the procurement of lumber. The contract contained a clause permitting a ten-percent overshipment or undershipment of the quantity ordered. This type of clause was standard in lumber procurement contracts. The Comptroller General held that the Army could obligate the amount necessary to pay for the maximurn quantities deliverable under the contract. 34 Comp. Gen. 596 (1955), Here, the quantity was definite and the government was required to accept the permissible variation.

In another 1955 case, the General Services Administration had published in the Federal Register an offer to purchase chrome ore up to a stated maximum quantity. Formal agreements would not be executed until producers made actual tenders of the ore. The program

[8] As cases such as 63 Comp. Gen. 129 illustrate, there can be many variations on the basic indefinite-quantity theme. It should not be assumed that every variation will violate the current FAR minimum purchase requirement.

published in the Federal Register was a mere offer to purchase and GSA could not obligate funds to cover the total quantity authorized. Reason: there was no mutual assent and therefore no binding agreement in writing until a producer responded to the offer and a formal contract was executed. B-125644, November 21, 1955.

So-called "level of effort" contracts are conceptually related to the "variation in quantity" cases. In one case, the Environmental Protection Agency entered into a cost-plus-fixed-fee contract for various services at an EPA facility. The contractor's contractual obligation was expressed as a "level of effort" in terms of staff-hours. The contractor was to provide up to a stated maximum number of direct staff-hours, to be applied on the basis of work orders issued during the course of the contract. Since the government was obligated under the contract to order specific tasks, the contract was sufficiently definitive to justify recording the full estimated contract amount at the time of award. B-183184, May 30, 1975. See also 58 Comp. Gen. 471,474 (1979); B-199422, June 22, 1981 (non-decision letter).

f. Amount to Be Recorded

In the simple firm freed-price contract, the amount to be recorded presents no problem. The contract price is the recordable obligation. However, in many types of contracts, the final contract price cannot be known at the time of award and an estimate must be recorded. The basic principle–record your best estimate, adjusting the obligation up or down periodically as more precise information becomes available-has already been summarized in our preliminary discussion of 31 U.S.C. § 1501(a).

Under a fixed-price contract with escalation, price redetermination, or incentive provisions, the amount to be obligated initially is the fixed price stated in the contractor the target price in the case, for example, of a contract with an incentive clause. 34 Comp. Gen. 418 (1955); B-133170, January 29, 1975; B-206283-O.M., February 17, 1983. Thus, in an incentive contract with a target price of $85 million and a ceiling price of $100 million, the proper amount to record initially as an obligation is the target price of $85 million. 55 Comp. Gen. 812,824 (1976).

When obligations are recorded based on a target price, the agency should establish appropriate safeguards to guard against violations of the Antideficiency Act. This usually means the administrative

reservation of sufficient funds to cover potential Iiability. 34 Comp. Gen. 418 at 420–21; B-206283-0. M., February 17, 1983.

g. Administrative Approval of Payment

In some cases, the contractual arrangement or related statutory or regulatory requirements may provide a process for administrative review and approval as a prerequisite to payment. This mayor may not affect the obligational process, depending on the purpose of the review. (The review and approval here refers to a process in addition to the normal review and approval of the voucher by a certifying officer which is always required.)

To illustrate, in 46 Comp. Gen. 895 (1967), GAO approved a Veterans Administration procedure under which charges for fee-basis outpatient treatment of eligible veterans would be recorded as obligations at the time VA administratively approved the vouchers. Since the review and approval process was necessary to determine whether the government should accept liability, no contractual obligation arose until that time. See also B-133944, January 31, 1958, and B-92679, July 24, 1950.

A 1977 case, B-137762.32, July 11, 1977, will further illustrate the concept. The case concerned a contract between the Internal Revenue Service and an informant. Under IRS regulations, there is no liability to make payment until IRS has evaluated the worth of the information and has assessed and collected any underpaid taxes and penalties. It is at this point that an appropriate IRS official determines that a reward should be paid and its amount, and it is at this point that a recordable obligation arises.

Byway of contrast, the obligation for a court-appointed attorney under the Criminal Justice Act occurs at the time of appointment and not when the court approves the payment voucher, even though the exact amount of the obligation is not determinable until the voucher is approved. This is because the government becomes contractually liable by the order of appointment, with subsequent court review of the voucher intended only to insure the reasonableness of the expenses incurred. Thus, payment must be charged to the fiscal year in which the appointment was made. 50 Comp. Gen, 589 (1971).

h. Miscellaneous Contractual Obligations

The core issue in many of the previously discussed cases has been when a given transaction ripens into a recordable obligation, that is,

precisely when the "definite commitment" occurs. Many of the cases do not fit neatly into categories. Rather, the answer must be derived by analyzing the nature of the contractual or statutory commitments in the particular case.

A 1979 case dealt with a lease arrangement entered into by the Peace Corps in Korea. Under a particular type of lease recognized by Korean law, the lessee does not make installment rental payments. Instead, the lessee makes an initial payment of approximately 50 percent of the assessed valuation of the property. At the end of the lease, the lessor is required to return the entire initial payment. The lessor makes his profit by investing the initial payment at the local interest rate. Since the lease is a binding contractual commitment and since the entire amount of the initial payment may not be recoverable for a number of reasons, GAO found it improper to treat the initial payment as a mere advance or an account receivable (as in the case of travel advances) and thus not reflected as an obligation. Rather, the amount of the initial payment must be recorded as an obligation chargeable to the fiscal year in which the lease is entered into, with subsequent returns to be deposited in the Treasury as miscellaneous receipts. B-192282, April 18, 1979.

Several cases deal with court-related obligations. For example, the obligation for fees of jurors-including retroactive increases authorized by 28 U.S.C. § 1871—occurs at the time the jury service is performed. 54 Comp. Gen. 472 (1974). See also 50 Comp. Gen. 589 (1971), dealing with obligations under the Criminal Justice Act, discussed above under "Administrative Approval of Payment."

The recording of obligations for land commissioners appointed to determine just compensation in land condemnation cases was discussed in B-184782, February 26,1976, and 56 Comp. Gen. 414 (1977). The rules derived from these decisions are as follows:

- The obligation occurs at the time of appointment and is chargeable to the fiscal year of appointment if a specific case is referred to the commission in that fiscal year.
- Pendency of an action will satisfy the bona fide needs rule and will be sufficient to support the obligation even though services are not actually performed until the following fiscal year.
- Appointment of a "continuous" land commission creates no obligation until a particular action is referred to it.

- An amended court order increasing the compensation of a particular commissioner amounts to a new obligation and the full compensation is chargeable to the appropriation current at the time of the amended order.
- A valid obligation occurs under the above principles even though the order of appointment does not expressly charge the costs to the United States because, under the Constitution, the costs cannot be assessed against the condemnee.

(Beginning with fiscal year 1978, the appropriation to compensate land commissioners was switched from the Justice Department to the Judiciary and since then has been a no-year appropriation. We retain the above summary here to illustrate the analysis and because it may have use by analogy in similar situations.)

i. Interagency Transactions

It is not uncommon for federal agencies to provide goods or services to other federal agencies. Subsection (a)(1) of 31 U.SC. § 1501 expressly applies to interagency contracts. This, however, does not embrace all interagency transactions. When an agency obtains goods or services from another agency, the obligational treatment of the transaction depends on whether or not the order is "required by law" to be placed with the other agency. If it is "required by law," the transaction is governed by subsection (a)(3) of 31 US.C. $1501, discussed later in this section. If it is not "required by law," subsection (a)(1) applies. Interagency orders not required by law are sometimes termed "voluntary orders." Thus, except for "required by law" situations, the recording criteria are the same whether the contract is with a private party or another federal agency.

(1) Economy Act vs. other authority

A major source of authority for voluntary interagency agreements is the Economy Act, 31 U.S.C. $1535. An Economy Act

agreement-assuming it meets the criteria of subsection (a)(I) -is recorded as an obligation the same as any other contract.[9] However, Economy Act agreements are subject to one additional requirement. Under 31 U.S.C. § 1535(d), the period of availability of funds transferred pursuant to an Economy Act agreement may not exceed the period of availability of the source appropriation. Thus, one-year appropriations obligated by an Economy Act agreement must be deobligated at the end of the fiscal year charged to the extent that the performing agency has not performed or incurred valid obligations under the agreement. 39 Comp. Gen. 317 (1959); 34 Comp. Gen. 418,421-22 (1955). It was, for example, improper for the Library of Congress to use annual funds transferred to it under Economy Act agreements and unobligated by it prior to the end of the fiscal year to provide services in the following fiscal year. Financial Audit: First Audit of the Library of Congress Discloses Significant Problems, GAO/AFMD-91-13 (August 1991). The reason for this requirement is to prevent the Economy Act from being used to extend the obligational life of an appropriation beyond that provided by Congress in the appropriation act. 31 Comp. Gen. 83, 85 (1951). The deobligation requirement of 31 U.S.C. § 1535(d) does not apply to obligations against no-year appropriations. 39 Comp. Gen. 317,319 (1959).

Where the agreement is based on some statutory authority other than the Economy Act, the recording of the obligation is still governed by 31 U.S.C. §1501(a)(1). However, 31 U.S.C. §1535(d) does not apply. In this situation, the obligation will remain payable in full from the appropriation initially charged, regardless of when performance occurs, in the same manner as contractual obligations generally, subject, of course, to the bona fide needs rule and to any restrictions in the legislation authorizing the agreement. Thus, it is necessary to determine the correct statutory authority for any interagency agreement in order to apply the proper obligational principles.

[9]The determination of whether an interagency agreement is "binding" for purposes of recording under 31 U. SC. §1501(a)(1) is made in the same manner as if the contract were with a private party-examining precisely what the parties have "committed" themselves to do under the terms of the agreement. However, an agreement between two government agencies cannot be legally "enforced" against a defaulting agency in the sense of compelling performance or obtaining damages. Enforcement against another agency is largely a matter of comity and good faith. Thus, the term "binding"' in the context of interagency agreements reflects the undertakings expressed in the agreement without regard to the legal consequences (or lack thereof) of non-performance.

The following three cases, involving interagency provision of services, will illustrate these principles.

- Agreement under which funds were transferred from Department of Health, Education, and Welfare to Federal Aviation Administration to provide training for air traffic control trainees was found authorized by Manpower Development and Training Act of 1962 rather than Economy Act. Therefore, while initial recording of obligation was governed by 31 U.S.C. § 1501(a)(1), funds remained available for further obligation by FAA subject to time limits of Manpower Act rather than deobligation requirement of 31 U.S.C. § 1535(d). 51 Comp. Gen. 766 (1972).
- Agreement entered into in FY 1976 between Administrative Office of U.S. Courts and General Services Administration for design and implementation of automated payroll system was authorized by Federal Property and Administrative Services Act rather than Economy Act. Since agreement met requirements of 31 U.S.C. § 1501(a)(1), it was properly recordable as a valid obligation against FY 1976 funds and was not subject to 31 U.S.C. § 1535(d). 55 Comp. Gen. 1497 (1976).
- Army Corps of Engineers entered into agreement with Department of Housing and Urban Development to perform flood insurance studies pursuant to orders placed by HUD. Since the agreement presumably required the Corps to perform as HUD placed the orders, a recordable obligation would arise when HUD placed art order under the agreement. Since agreement was authorized by National Flood Insurance Act rather than Economy Act, funds obligated by order would remain obligated even though Corps did not complete performance (or contract out for it) until following fiscal year. B-167790, September 22, 1977.

A voluntary interagency order for goods is subject to the same basic rules as a voluntary interagency order for services. If the order is governed by the Economy Act and otherwise meets the criteria of 31 U.S.C. § 1501(a)(1), it is recordable as an obligation when the order is placed but is subject to the deobligation requirement of 31 U.S.C. § 1535(d). If the order is not governed by the Economy Act, it constitutes an obligation only to the extent that the performing agency has completed the work or has awarded contracts to fill the order. For example, Military Interdepartmental Procurement Requests (MIPR) are viewed as authorized by the Economy Act. Therefore, while a MIPR may be initially recorded as an obligation under 31 U.S.C.

§1501(a)(1), it is subject to the deobligation requirement of 31 U.S.C. §1535(d) and is thus ultimately chargeable to appropriations current when the performing component incurs valid obligations. 59 Comp. Gen. 563 (1980); 34 Comp. Gen. 418,422 (1955).

Regardless of the statutory basis for the agreement, an obligation is recordable under subsection (a)(]) only if the criteria of that subsection–binding agreement, sufficiently specific, etc.–are met.

In B-193005, October 2, 1978, GAO considered the procurement of crude oil for the Strategic Petroleum Reserve. Under the Federal Property and Administrative Services Act, the General Services Administration may procure materials for other federal agencies and may delegate this authority. GSA had delegated the authority to procure fuel commodities to the Secretary of Defense. Thus, the Department of Energy could procure the oil through the Defense Fuel Supply Center in a non-Economy Act transaction. An order placed by the Department of Energy could be recorded as an obligation under 31 U.S.C. §1501(a)(1) if it constituted a "binding agreement," and the funds would remain available for contracts awarded by Defense beyond the original period of obligational availability.[10] This result would have been precluded by 31 U.S.C. §1535(d) had the transaction been governed by the Economy Act. An order would constitute a binding agreement for recording purposes if accepted by the requisitioned agency, or if the requisitioned agency were required to perform under the terms of a "master" agreement.

In 59 Comp. Gen. 602 (1980), GAO considered the procedure by which the Bureau of Alcohol, Tobacco, and Firearms ordered "strip stamps" from the Bureau of Engraving. (These are the excise tax stamps one sees pasted across the caps of liquor bottles.) GAO reviewed pertinent legislation and concluded that ATF was not "required by law" to procure its strip stamps from the Bureau of Engraving. Since individual orders were not binding agreements, it was essentially immaterial in one important respect whether the order was governed by the Economy Act or some other law; in neither event could ATF's funds remain obligated beyond the last day of a fiscal

[10] In a subsequent letter to the Senate Committee on Energy and Natural Resources, the Comptroller General pointed out that the 1978 decision would not affect the applicability of the Impoundment Control Act to the Strategic Petroleum Reserve program since the statutory definition of "deferral'" applies to expenditures as well as obligations. B-200685, December 23, 1980.

year to the extent an order remained unfilled. Funds could be considered obligated at the end of a fiscal year only to the extent that stamps were printed or in process or that the Bureau of Engraving had entered into a contract with a third party to provide them.

Thus, a voluntary interagency order, whether authorized by the Economy Act or some other law, is recordable under 31 U.S.C. § 1501(a)(1) only if it constitutes a binding agreement and meets the other criteria of that subsection. If it does, the applicability or non-applicability of 31 U.S.C. § 1535(d) then becomes relevant. If it does not, the order constitutes an obligation only to the extent the performing agency has completed the work or has awarded contracts to have it done. In addition to 59 Comp. Gen. 602 and B-193005, see 39 Comp. Gen. 829 (1960); 34 Comp. Gen. 705,708 (1955); 23 Comp. Gen. 88 (1943); B-180578-O. M., September 26,1978.

Similarly, an order for an item not stocked by the requisitioned agency (or, if out of stock, not routinely on order) is not a recordable obligation until the requisitioned agency purchases the item or executes a contract for it. The reason is that the order is not a binding agreement. It is merely an offer which is accepted by the requisitioned agency's performance. The basic rules in this area were established by 34 Comp. Gen. 705 (1955).

(2) Orders from stock

The obligational treatment of orders for items to be delivered from stock of the requisitioned agency derives from 32 Comp. Gen. 436 (1953). An order for items to be delivered from stock is a recordable obligation if (1) it is intended to meet a bona fide need of the fiscal year in which the order is placed or to replace stock used in that fiscal year,[11] and (2) the order is firm and complete. To be firm and complete, the order must request prompt delivery of specific available stock items for a stated consideration and must be accepted by the supplying agency in writing. "Available" means on hand or routinely on order. However, acceptance is not required for common-use stock items which are on hand or on order and will be delivered promptly.

[11]The fact that the replacement stock will not be used until the following year will not defeat an otherwise valid obligation. See 44 Comp. Gen. 695 (1965).

Although these rules were developed prior to the enactment of 31 U.S.C. § 1501(a)(1), they continue to govern the recording of obligations under that statute. 34 Comp. Gen. 705 (1955); 34 Comp. Gen. 418,422 (1955). Materials which are specially created for a particular purpose are not "stock." 44 Comp. Gen. 695 (1965).

(3) Project orders

"Project orders" are authorized by 41 U.S.C. § 23, which provides:

"All orders or contracts for work or material or for the manufacture of material pertaining to approved projects heretofore or hereafter placed with Government-owned establishments shall be considered as obligations in the same manner as provided for similar orders or contracts placed with commercial manufacturers or private contractors, and the appropriations shall remain available for the payment of the obligations so created as in the case of contracts or orders with commercial manufacturers or private contractors."[12]

This statute, derived from earlier appropriation act provisions appearing shortly after World War I, applies only to the military departments, although the orders may be placed with any "Government-owned establishment." B-95760, June 27, 1950.[13] Precisely why the statute was enacted is not clear. Some discussion of its origins may be found in 26 Comp. Dec. 1022 (1920). The Coast Guard has virtually identical authority in 14 U.S.C. § 151.

A project order is a valid and recordable obligation when the order is issued and accepted, regardless of the fact that performance may not be accomplished until after the expiration of the fiscal year. 1 Comp. Gen. 175 (1921); B-135037-O. M., June 19, 1958. The statute does not, however, authorize the use of the appropriations so obligated for the purpose of replenishing stock used in connection with the order. A-25603, May 15, 1929. The requirement of specificity applies to project orders the same as any other recordable obligations under 31 U.S.C. § 1501(a)(1). B-126405, May 21, 1957.

[12]The term "approved projects," as used in 41 U.S.C. § 23, has no special meaning. It refers simply to "projects that have been approved by officials having legal authority to do so." B-171049-O. M., February 1.7, 1972. Cf. 26 Comp. Dec. 1022, 1023–24 (1920).

[13]The rationale of B-95760 is not clearly stated. The provision first appeared as permanent authority in the Army's FY 1921 appropriation (41 Stat. 975). Had it been intended to apply to all agencies, it would not have been necessary to repeat it for the Navy in 1922 (42 Stat. 812) and the Coast Guard in 1942 (56 Stat. 328).

Since a project order is not an Economy Act transaction, the deobligation requirement of 31 U.S.C. § 1535(d) does not apply. 34 Comp. Gen. 418,422 (1955). See also 16 Comp. Gen. 752 (1937). Also, unlike the Economy Act, 41 U.S.C. § 23 does not authorize advance payment. Thus, advance payment for project orders is not authorized unless permitted by some other statute. B-95760, June 27, 1950.

2. Subsection (a)(2): Loans

Under 31 U.S.C. § 1501(a)(2), a recordable obligation exists when there is documentary evidence of "a loan agreement showing the amount and terms of repayment."

A loan agreement is essentially contractual in nature. Thus, to have a valid obligation, there must be a proposal by one party and an acceptance by another. Approval of the loan application must be communicated to the applicant within the fiscal year sought to be charged, and there must be documentary evidence of that communication. B-159999 -0. M., March 16, 1967. Where a loan application is made in one fiscal year and approval is not communicated to the applicant until the following fiscal year, the obligation is chargeable to the later year. Id.; B-159999-O.M., December 14, 1966.

Telegraphic notification of approval of a loan application where the amount of the loan and terms of repayment are thereby agreed upon is legally acceptable. B-159999-O. M., December 14, 1966.

To support a recordable obligation under subsection (a)(2), the agreement must be sufficiently definite and specific, just as in the case of subsection (a)(1) obligations. To illustrate, the United States and the government of Brazil entered into a loan agreement in 1964. As a condition precedent to any disbursement under the agreement, Brazil was to furnish a statement covering utilization of the funds. The funds were to be used for various economic and social development projects "as may, from time to time, be agreed upon in writing" by the governments of the United States and Brazil. While the loan agreement constituted a valid binding contract, it was not sufficiently definite or specific to validly obligate FY 1964 funds. The basic agreement was little more than an "agreement to agree," and an obligation of funds could arise only when a particular "utilization

statement" was submitted and approved. B-155708-O. M., April 26, 1965.

Prior to fiscal year 1992, the amount to be recorded in the case of a loan was quite simple-the face amount of the loan. From the budgetary perspective, this was undesirable because the obligation was indistinguishable from any other cash outlay. By disregarding at the obligational stage the fact that loans are supposed to be repaid, this treatment did not reflect the true cost to the government of direct loan programs. Congress addressed the situation in the Federal Credit Reform Act of 1990, enacted as section 13201 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508,104 Stat. 1388, 1388-609, and codified at 2 U.S.C. §§ 661–661f (Supp. III 1991). The general approach of the FCRA is to require the advance provision of budget authority to cover the subsidy portion of direct loans (in recognition of the fact that not all loans are repaid), with the non-subsidy portion (the portion expected to be repaid) financed through borrowings from the Treasury. The Office of Management and Budget has issued detailed implementing instructions in OMB Circular No. A-34, Part VI (1991). The FCRA applies to new direct loan obligations incurred on or after October 1, 1991.

FCRA defines "direct loan" as "a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest." 2 U.S.C. § 661a(1). A direct loan obligation is "a binding agreement by a Federal agency to make a direct loan when specified conditions are fulfilled by the borrower." Id. § 661a(2). The "cost" of a direct loan is the estimated long-term cost to the government, taking into consideration disbursements and repayments, calculated on a net present value basis at the time of disbursement. Id. § 661a(5).

Unless otherwise provided by statute, new direct loan obligations may be incurred only to the extent that budget authority to cover their costs is provided in advance. Id. § 661c(b). Under this provision, the typical appropriation will include both an appropriation of budget authority for the subsidy costs and a program ceiling (total face amount of loans supportable by the cost appropriation). The appropriation is made to a "program account." When a direct loan obligation is incurred, its cost is obligated against the program account. The actual financing is done through a revolving, non-budget "financing account." Loan repayments are credited to the financing

account. See generally OMB Circular No. A-34, $62.6. The overobligation or overexpenditure of either the loan subsidy or the credit level supportable by the enacted subsidy violates the Antideficiency Act. Id. 563.2.

3. Subsection (a)(3): Interagency Orders Required by Law

The third standard for recording obligations, 31 U.S.C. §1501(a)(3), is "an order required by law to be placed with [a federal] agency."

Subsection (a)(3) means exactly what it says. An order placed with another government agency is recordable under this subsection only if it is required by statute or statutory regulation to be placed with the other agency. The subsection does not apply to orders which are merely authorized rather than required. 34 Comp. Gen. 705 (1955).

An order required by law to be placed with another agency is not an Economy Act transaction. Therefore, the deobligation requirement of 31 U.S.C. §1535(d) does not apply. 35 Comp. Gen. 3,5 (1955).

The fact that the work will be performed in the next fiscal year does not defeat the obligation as long as the bona fide need testis met. 59 Comp. Gen. 386 (1980); 35 Comp. Gen. 3 (1955). Also, the fact that the work is to be accomplished and reimbursement made through use of a revolving fund is immaterial. 35 Comp. Gen. 3 (1955); 34 Comp. Gen. 705 (1955).

A common example of "orders required by law" is printing and binding to be done by the Government Printing Office. The rule is that a requisition for printing services maybe recorded as an obligation when placed if (1) there is a present need for the printing, and (2) the requisition is accompanied by copy or specifications sufficient for GPO to proceed with the job.

Thus, a requisition by the Commission on Fine Arts for the printing of "Sixteenth Street Architecture, Volume I" placed with GPO in FY 1977 and accompanied by manuscript and specifications obligated FY 1977 funds and was chargeable in its entirety to FY 1977, notwithstanding that the printing would be done in the following fiscal year. 59 Comp. Gen. 386 (1980). However, a requisition for U.S. Travel Service sales promotional literature placed with GPO near the end of FY 1964 did not obligate FY 1964 funds where no copy or manuscript was furnished to GPO until FY 1965,44 Comp. Gen. 695 (1965). For other

printing cases illustrating these rules, see 29 Comp. Gen. 489 (1950); 23 Comp. Gen. 82 (1943); B-154277, June 5, 1964; B-123964, August 23, 1955; B-1 14619, April 17, 1953; B-50663, June 30, 1945; B-35807, August 10, 1943; B-35967, August 4, 1943; B-34888, June 21, 1943.

An agency may use a printing estimate furnished by GPO to establish the level of funds to be obligated pending receipt of a bill reflecting actual cost. However, the printing estimate alone, even if written, unaccompanied by the placement of an order, is not sufficient to create a valid and recordable obligation. B-182081, January 26, 1977, affirmed in B-182081, February 14, 1979. In the cited decision, there was no valid obligation before the ordering commission went out of existence and its appropriations ceased to be available for further obligation. Therefore, there was no appropriation available to reimburse GPO for work done under the invalid purported obligation.

GPO is required by law to print certain congressional materials such as the Congressional Record, and receives a "Printing and Binding" appropriation for this purpose. For such items where no further request or authorization is required, a copy of the basic law authorizing the printing plus a copy of the appropriation constitute the obligating documents. B-123964, August 23,1955.

Another common "order required bylaw" situation is building alteration, management, and related services to be performed by the General Services Administration. For example, a job order by the Social Security Administration for building repairs validly obligated funds of the fiscal year in which the order was placed, by virtue of subsection (a)(3), notwithstanding that GSA was unable to perform the work until the following fiscal year. 35 Comp. Gen. 3 (1955). See also B-158374, February 21, 1966. However, this result assumes compliance with the bona fide need concept, Thus, an agreement for work incident to the relocation of Federal Power Commission employees placed in FY 1971 did not validly obligate FY 1971 funds where it was clear that the relocation was not required to, and would not, take place, nor would the space in question be made tenantable, until the following fiscal year. B-95136-O. M., August 11, 1972. Orders placed with GSA are further discussed in 34 Comp. Gen. 705 (1955).

As noted earlier, GAO has expressed the view that the recording criteria of 31 U.S.C. §1501(a) should be followed in evaluating

obligations of the government of the District of Columbia. Thus, orders by a department of the **D.C.** government for repairs and improvements which are required by statute or statutory regulation to be placed with the **D.C.** Department of General Services and performed through use of the Repairs and Improvements Working Fund create valid obligations when the orders are placed. **B-180578-O.M.,** September 26, 1978.

4. Subsection (a)(4): Orders Without Advertising

The fourth recording standard in 31 U.S.C. **§ 1501(a) is—**

"an order issued under a law authorizing purchases without advertising (A) when necessary because of a public exigency; (B) for perishable subsistence supplies; or (C) within **specific** monetary limits."

Subsection **(a)(4)** is limited to statutorily authorized purchases without advertising in the three situations **specified.** The subsection must be self-explanatory **as** there appear to be no Comptroller General decisions under it.

5. Subsection (a)(5): Grants and Subsidies

In the case of federal assistance program funds, 31 U.S.C. **§ 1501(a)(5)** requires that the obligation be supported by documentary evidence of a grantor subsidy payable:

"(A) from appropriations made for payment of, or contributions to, amounts required to be paid in **specific** amounts freed by law or under formulas prescribed by law;

"(B) under an agreement authorized by law; or

"(C) under plans approved consistent with and authorized by law."

a. Grants

In order to properly obligate an appropriation for an assistance **program,** some action creating a definite liability against the appropriation must occur during the period of the obligational availability of the appropriation. In the case of grants, the obligating action will usually be the execution of a grant agreement. The particular document will vary and may be in the form of an agency's approval of a grant application or a letter of commitment. See 39 **Comp. Gen. 317** (1959); 37 **Comp. Gen.** 861,863 (1958); 31 **Comp. Gen.** 608 (1952); **B-128190,** June 2, 1958; **B-114868.01-O.M.,** March 17, 1976.

In this connection, GAO's Accounting Principles and Standards state:

> "Accounting for a federal assistance award begins with the execution of an agreement or the approval of an application or similar document in which the amount and purposes of the grant, the performance periods, the obligations of the parties to the award, and other terms are set out. A legal obligation to disburse the assistance funds, in accordance with the terms of the agreement, generally occurs with an executed agreement or an approved application or similar document."[14]

As a general proposition, four requirements must be met. to properly obligate assistance funds:

- There must be some action to establish a firm commitment on the part of the United States.
- The commitment must be unconditional on the part of the United States. See 50 Comp. Gen. 857,862 (1971).
- There must be documentary evidence of the commitment. Champaign County v. Law Enforcement Assistance Administration, 611 F.2d 1200 (7th Cir. 1979) (court refused to regard documentation requirement as "form over substance"); %126372, September 18, 1956.
- The award terms must be communicated to the official grantee, and where the grantee is required to comply with certain prerequisites, such as putting up matching funds, it must also be accepted by the grantee during the period of availability of the grant funds.

An illustration of this latter requirement is B-220527, December 16, 1985. The Economic Development Administration made an "offer of grant" to a Connecticut municipality which would have required a substantial outlay of funds by the municipality. The offer was accepted by a town official who had no authority to accept the grant. By its own municipal ordinance, only the town council could accept a grant offer. By the time the town marshaled the resources to fulfill its obligations under the grant and the unauthorized acceptance was ratified by the town council, the funds had expired for obligational purposes. GAO held that no valid grant obligation on the part of the government had ever been made. See also B-164990, January 10, 1969, finding an attempted obligation invalid where the program legislation required approval of a proposed grant by the state

[14]GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 2, Appendix I, § G10, pars. .03 (1984).

governor and he had not yet agreed, even though the award instruments had already been executed.

Once the appropriation has been properly obligated, performance and the actual disbursement of funds may carryover beyond the period of obligational availability. 31 Comp. Gen. 608, 610 (1952); 20 Comp. Gen. 370 (1941); B-37609, November 15, 1943; B-24827, April 3, 1942; B-124374-O.M., January 26,1956.

Applying the above principles, the Comptroller General found that a document entitled "Approval and Award of Grant" used by the Economic Development Administration was sufficient for recording grant obligations under the local public works program because it "reflects the Administration's acceptance of a grant application; specifies the project approved and the amount of funding; and imposes a deadline for affirmation by the grantee." B-126652, August 30, 1977.

If the above requirements are not met, then the appropriation is not validly obligated. Thus, the Comptroller General found an attempted obligation invalid in B-164990, September 6, 1968, where the grantee corporation was not in existence when the obligation was recorded. Also, the relevant program legislation must be examined to see if there are any additional requirements.

The preceding cases mostly involve obligations evidenced by the issuance of an award instrument. Questions may also arise over exactly when an obligation "freed by law" or under a required plan takes place. For example, under the Medicaid program, the obligation occurs under a state plan when an entitlement is created in favor of the state. This happens when a covered medical service is provided. See B-164031(3).150, September 5,1979.

Also, where an agency is required to allocate funds to states on the basis of a statutory formula, the formula establishes the obligation to each recipient rather than the agency's allocation since, if the allocation is erroneous, the agency must adjust the amounts paid each recipient. See 41 Comp. Gen. 16 (1961); B-164031(3).150, September 5, 1979. In this type of situation, the obligation occurs by operation of law, even though there may have been no formal recording. A decision discussing this concept in the context of the Job Training Partnership Act is 63 Comp. Gen. 525 (1984). For a

discussion of obligation and deobligation of funds under the now defunct Comprehensive Employment and Training Act (the predecessor of the Job Training Partnership Act) in the context of the Impoundment Control Act, see B-200685, April 27,1981.

The rules for deobligation and reobligation of assistance funds are the same as for appropriated funds generally. program legislation in a given case may, of course, provide for different treatment. For example, B-21 1323, January 3, 1984, considered a provision of the Public Works and Economic Development Act of 1965 under which funds apportioned to states remained available to the state until expended. Under that particular provision, funds deobligated as the result of a cost underrun could be reobligated by the state, without fiscal year limitation, for purposes within the scope of the program statute.

b. Subsidies

There have been relatively few eases dealing with the obligational treatment of subsidies, although the principles should parallel those for grants since they both derive from subsection (a)(5). In one case, GAO considered legislation authorizing the former Federal Home Loan Bank Board to make "interest adjustment" payments to member banks. The payments were designed to adjust the effective rates of interest charged by member banks on short- and long-term borrowing, the objective being to stimulate residential construction for low- and middle-income families. Funds were appropriated to the Board for this purpose on a fiscal year basis. GAO concluded that an obligation arose for purposes of 31 U.S.C. § 1501(a)(5) when a Federal Home Loan Bank made a firm and unconditional commitment in writing to a member institution, provided that the commitment letter included a reasonable expiration date. The funds would have to be deobligated to the extent that a member institution failed to execute loans prior to the specified expiration date. 50 Comp. Gen. 857 (1971).

In 65 Comp. Gen. 4 (1985), GAO advised the Department of Education that mandatory interest subsidies under the Guaranteed Student Loan Program should be recorded as obligations on a "best estimate" basis as they arise, even if the recordings would exceed available budgetary resources, Since the subsidies are not discretionary obligations but are imposed by law, there would be no Antideficiency Act violation. The decision overruled an earlier case (B-126372, September 18, 1956) which had held that the recording of obligations for mail rate

subsidies to air carriers could be deferred until the time of payment, 65 Comp. Gen. at 8 n.3.

In 64 Comp. Gen. 410 (1985), GAO considered obligations by the Department of Housing and Urban Development for operating subsidies to state public housing authorities for low-income housing projects. Under the governing statute and regulations, the amount of the subsidy was determined upon HUD's approval of the state's annual operating budget, although the basic commitment stemmed from an annual contribution contract, HUD's practice, primarily for states whose fiscal year coincides with that of the federal government, was to record the obligation on the basis of an estimate, issued in a letter of intent. GAO found this to be legally permissible, but cautioned that HUD was required to adjust the obligation up or down once it approved the operating budget.

A 1983 decision, B-212145, September 27, 1983, discusses the use of estimates subject to subsequent adjustment for the recording of obligations under the Payments in Lieu of Taxes Act, 31 U.S.C. §§ 6901–6906.

From the perspective of the recording of obligations, these two decisions—64 Comp. Gen. 410 and B-212145—are simply applications of the general principle, previously noted, that best estimates should be recorded when more precise information is not available, subject to later adjustment.

6. Subsection (a)(6): Pending Litigation

The sixth standard for recording obligations is "a liability that may result from pending litigation." 31 U.S.C. § 1501(a)(6).

Despite its seemingly broad language, subsection (a)(6) has very limited application. Most judgments against the United States are paid from a permanent indefinite appropriation, 31 U.S.C. $1304, covered in detail in Chapter 14. Accordingly, since the expenditure of agency funds is not involved, judgments payable under 31 U.S.C. § 1304 have no obligational impact on the respondent agency.

Not all judgments against the United States are paid from the permanent judgment appropriation. Several types are payable from agency funds. However, the mere fact that a judgment is payable from agency funds does not make it subject to subsection (a)(6). Thus far,

the Comptroller General has applied subsection (a)(6) in only two situations-land condemnation (35 Comp. Gen. 185 (1955)) and certain impoundment litigation (54 Comp. Gen. 962 (1975)).

In land condemnation proceedings, the appropriation is obligated when the request is made to the Attorney General to institute the proceedings. 34 Comp. Gen. 418,423 (1955); 34 Comp. Gen. 67 (1954); 17 Comp. Gen. 664 (1938); 4 Comp. Gen. 206 (1924).

As stated in 35 Comp. Gen. 185, 187, subsection (a)(6) requires recording an obligation in cases where the government is definitely liable for the payment of money out of available appropriations and the pending litigation is for the purpose of determining the amount of the government's liability. Thus, for judgments payable from agency appropriations in other than land condemnation and impoundment cases, the standard of 35 Comp. Gen. 185 should be applied to determine whether an obligation must be recorded.

In cases where a judgment will be payable from agency funds but recording is not required, 35 Comp. Gem 185 suggested that the agency should nevertheless administratively reserve sufficient funds to cover the contingent liability to avoid a possible violation of the Antideficiency Act. Id. at 187. While the administrative reservation may still be a good idea for other reasons, the majority of more recent cases (cited and summarized in Chapter 6 under the heading IntentiF'actors Beyond Agency Control) have taken the position that overobligations resulting from court-ordered payments do not violate the Antideficiency Act.

It should be apparent that the preceding discussion applies to money judgments-judgments directing the payment of money. In some types of litigation, a court may order an agency to take some specific action. While compliance will result in the expenditure of agency funds, this type of judgment is not within the scope of 35 Comp. Gen. 185. While we have found no cases, it seems clear from the application of 31 U.S.C. § 1501(a) in other contexts that no recordable obligation would arise while this type of litigation is still "pending."

7. Subsection (a)(7): Employment and Travel

Under 31 U.S.C. § 1501(a)(7), obligations are recordable when supported by documentary evidence of "employment or services of persons or expenses of travel under law." This subsection covers a variety of loosely related obligations.

a. Wages, Salaries, Annual Leave

salaries of government employees, as well as related items that flow from those salary entitlements such as retirement fund contributions, are obligations at the time the salaries are earned, that is, when the services are rendered. 24 Comp. Gen. 676, 678 (1945).[15] For example, in 38 Comp. Gen. 316 (1958), the Commerce Department wanted to treat the salaries of employees performing administrative and engineering services on highway construction projects as part of the construction contract costs. Under this procedure, the anticipated expenses of the employees, salaries included, would be recorded as an obligation at the time a contract was awarded, However, the Comptroller General held that this would not constitute a valid obligation under 31 U.S.C. § 1501. The employee expenses were not part of the contract costs and could not be obligated before the services were performed.

Subsection (a)(7) is not limited to permanent federal employees. It applies as well to persons employed in other capacities, such as temporary or intermittent employees or persons employed under a personal services contract. In Kinzley v. United States, 661 F.2d 187 (Ct. Cl. 1981), for example, the court found various agency correspondence sufficient compliance with subsection (a)(7) to permit a claim for compensation for services rendered as a project coordinator. Unlike subsection (a)(l), the court pointed out, subsection (a)(7) does not require a binding agreement in writing between the parties, but only documentary evidence of "employment or services of persons." Id. at 191.

For persons compensated on an actual expense basis, it may be necessary to record the obligation as an estimate, to be adjusted when the services are actually performed. Documentation requirements to support the obligation or subsequent claims are up to the agency. E.g., B-217475, December 24,1986.

[15] The Federal Labor Relations Authority has also applied this principle in "urn@ the negotiability of various union proposals. See Fort Knox Teachers Ass'n and Board of Education, 27 F. L.R.A. 203 (No. 34, 1987); Fort Knox Teachers Ass'n and Fort Knox Dependent Schools, 26 F. L.R.A. 934 (No. 108, 1987).

When a pay increase is granted to wage board employees, the effective date of the increase is governed by 5 U.S.C. § 5344. This effective date determines the government's liability to pay the additional compensation. Therefore, the increase is chargeable to appropriations currently available for payment of the wages for the period to which the increases apply. 39 Comp. Gen. 422 (1959). This is true regardless of the fact that appropriations maybe insufficient to discharge the obligation and the agency may not yet have had time to obtain a supplemental appropriation. The obligation in this situation is considered "authorized bylaw" and therefore does not violate the Antideficiency Act. Id. at 426.

Annual leave status "is synonymous with a work or duty status." 25 Comp. Gen. 687 (1946). As such, annual leave obligates appropriations current at the time the leave is taken. Id.; 50 Comp. Gen. 863,865 (1971); 17 Comp. Gen. 641 (1938). A separate obligation for annual leave is necessary only when it becomes due and payable as terminal leave. OMB Circular No. A-34, 523.2. Except for employees paid from revolving funds (25 Comp. Gen. 687 (1946)), or where there is some statutory indication to the contrary (B-70247, January 9, 1948), the obligation for terminal leave is recorded against appropriations for the fiscal year covering the employee's last day of active service. 25 Comp. Gen. 687, 688 (1946); 24 Comp. Gen. 578, 583 (1945).

Bonuses such as performance awards or incentive awards obligate appropriations current at the time the awards are made. Thus, for example, where performance awards to Senior Executive Service officials under 5 U.S.C. § 5384 were made in FY 1982 but actual payment had to be split between FY 1982 and FY 1983 to stay within statutory compensation ceilings, the entire amount of the awards remained chargeable to FY 1982 funds. 64 Comp. Gen. 114, 115 n.2 (1984). The same principle would apply to other types of discretionary payments; the administrative determination creates the obligation. E.g., B-80060, September 30, 1948.

Employees terminated by a reduction in force (RIF) are entitled by statute to severance pay. Severance pay is obligated on a pay period by pay period basis. Thus, where a RIF occurs near the end of a fiscal year and severance payments will extend into the following fiscal year, it is improper to charge the entire amount of severance pay to the

fiscal year in which the RIF occurs. B-200170, July 28, 1981; OMB Circular No. A-34, § 23.2.[16]

GAO reached a different result in B-200170, September 24, 1982. The United States Metric Board was scheduled to terminate its existence on September 30, 1982. Legislative history indicated that the Board's FY 1982 appropriation was intended to include severance pay, and no appropriations had been requested for FY 1983. Under these circumstances, severance payments to be made in FY 1983 were held chargeable to the FY 1982 appropriation. A contrary result would have meant that the FY 1982 funds would expire, and Congress would have had to appropriate the same funds again for FY 1983.

b. Compensation Plans in Foreign Countries

By statute, the State Department is required to establish compensation plans for foreign national employees of the Foreign Service in foreign countries. The plans are to be "based upon prevailing wage rates and compensation practices. . . for corresponding types of positions in the locality of employment," to the extent consistent with the public interest. 22 U.S.C. § 3968(a)(1).

Under subsection (b) of 22 U.S.C. $3968, other government agencies are authorized to administer foreign national employee compensation programs in accordance with the applicable provisions of the Foreign Service Act. This provision, for example, authorized the Defense Department to establish a pension and life insurance program for foreign national employees in Bermuda, provided that it corresponded to prevailing local practice. 40 Comp. Gen. 650 (1961).

Subsection (c) of 22 U.S.C. § 3968 authorizes the Secretary of State to prescribe regulations for local compensation plans applicable to all federal agencies. To the extent this authority is not exercised, however, the statute does not otherwise require that a plan established by another agency conform to the State Department's plan. An agency establishing a local plan should, to the extent not regulated by State, coordinate with other agencies operating in the locality. 40 Comp. Gen. at 652. (As a practical matter, two agencies operating in the same locality should not develop substantially

[16]GAO had previously equivocated on the issue of obligating for severance pay, preferring to coordinate with OMB's budget procedures, subsequently issued in OMB Circular No. A-34. See 45 Comp. Gen. 584 (1906).

different plans, assuming both legitimately reflect prevailing local practice.)

To the extent the authority of 22 U.S.C. § 3968 is exercised in a given country, the obligational treatment of various elements of compensation may vary from what would otherwise be required. For example, Colombian law provides for the advance payment of accrued severance pay to help the employee purchase or make improvements on a home. Thus, under a compensation plan for foreign national employees in Colombia, severance pay would be recorded as an obligation against the fiscal year appropriation current at the time of accrual. B-192511, February 5, 1979.

While 22 U.S.C. § 3968 authorizes compensation plans based on local practice, it does not permit automatic disregard of all other laws of the United States. Thus, under the Colombian severance pay program noted above, if the employee subsequently is terminated for cause or otherwise loses eligibility, the agency must proceed with collection action under the Federal Claims Collection Act, local practice to the contrary notwithstanding. B-192511, June 8, 1979. Similarly, accrued severance pay retains its status as United States funds up to actual disbursement and is therefore subject to applicable fiscal and fund control requirements. B-199722, September 15, 1981 (severance pay plan in Jordan).

In several foreign countries, foreign nationals employed by the United States are entitled to be paid a "separation allowance" when they resign, retire, or are otherwise separated through no fault of their own. The allowance is based on length of service, rate of pay at time of separation, and type of separation. Unlike severance pay for federal employees, these separation allowances represent binding commitments which accrue during the period of employment. As such, they should be recorded as obligations when they are earned rather than when they are paid. FGMSD-76-25, October 17, 1975; FGMSD-75-20, February 13, 1975; Substantial Understatements of Obligations for Separation Allowances for Foreign National Employees, B-179343, October 21, 1974. (These three items are GAO reports, the first two being untitled letter reports.)

C. Training

The obligation for training frequently stems from a services contract and to that extent is recordable under subsection (a)(1) rather than

subsection (a)(7). The rules for training obligations are summarized in Chapter 5, Section B.5.

d. Uniform Allowance

The Federal Employees Uniform Act, 5 U.S.C. $5901, authorizes a uniform allowance for each employee required by statute or regulation to wear a uniform. The agency may furnish the uniform or pay a cash allowance. Where an agency elects to pay an allowance, the obligation arises when the employee incurs the expense and becomes entitled to reimbursement. Thus, the appropriation chargeable is the one currently available at the time the employee makes the expenditure or incurs the debt. 38 Comp. Gen. 81 (1958).

e. Travel Expenses [17]

The obligation of appropriations for expenses relating to travel was an extremely fertile area and generated a large number of decisions before 31 U.S.C. § 1501 was enacted. The cases seem to involve every conceivable permutation of facts involving trips or transactions covering more than one fiscal year. The enactment of 31 U.S.C. § 1501 logically prompted the question of how the new statute affected the prior decisions. It did not, replied the Comptroller General. Thus, the starting point is that subsection (a)(7) incorporates prior GAO decisions on obligations for travel. 35 Comp. Gen. 183 (1955); 34 Comp. Gen. 459 (1955).

The "leading case" in this area appears to have been 35 Comp. Gen. 183 (1955), which states the pertinent rules. The rules for travel may be summarized as follows: The issuance of a travel order in itself does not constitute a contractual obligation. The travel order is merely an authorization for the person specified to incur the obligation. The obligation is not incurred until the travel is actually performed or until a ticket is purchased, provided in the latter case the travel is to be performed in the same fiscal year the ticket is purchased. 35 Comp. Gen. at 185. A 1991 decision, 70 Comp. Gen. 469, reaffirmed the principle that the expenses of temporary duty travel are chargeable to the fiscal year or years in which they are actually incurred.

Some of the earlier cases in this evolutionary process areas follows:

[17] This section does not apply to travel incident to employee transfers. The rules for employee transfers are set forth separately later.

- Where tickets are purchased in one fiscal year and the travel is performed in the following fiscal year, the obligation is chargeable to the year in which the travel is performed, even though early purchase of the tickets may have been necessary to assure reservations. 27 Comp. Gen. 764 (1948); 26 Comp. Gen. 131 (1946).
- A "continuous journey" involving more than one segment obligates funds of the year in which the ticket was purchased, as long as the trip starts in that same fiscal year. However, procurement of transportation en route is a new obligation. Similarly, a round-trip ticket obligates funds at the time of purchase as long as the trip starts in the same fiscal year. However, if the return portion of the ticket cannot be used and a separate return ticket must be purchased, anew obligation is created. 26 Comp. Gen. 961 (1947); A-36450, May 27, 1931.
- Per diem incident to official travel accrues from day to day. Per diem allowances are chargeable to appropriations current when the allowances accrue (i.e., when the expenditures are made). Thus, where travel begins in one fiscal year and extends into the next fiscal year, the per diem obligation must be split along fiscal year lines, even though the cost of the travel itself may have been chargeable in its entirety to the prior fiscal year. 23 Comp. Gen. 197 (1943).
- Reimbursement on a mileage basis is chargeable to the fiscal year in which the major portion of the travel occurred. If travel is begun sufficiently prior to the end of a fiscal year to enable the employee to complete a continuous journey before the close of the fiscal year, the obligation is chargeable entirely to that year. However, if the travel is begun so late in the fiscal year that the major portion of it is performed in the succeeding fiscal year, it is chargeable to appropriations for the succeeding year. 9 Comp. Gen. 458, 460 (1930); 2 Comp. Dec. 14 (1895).
- Where (1) an employee is authorized to travel by privately owned vehicle at not to exceed the constructive cost of similar travel by rail, (2) the trip starts in one fiscal year and extends into the following fiscal year, and (3) the journey would have been completed in the prior year had rail travel been used, the travel expense is chargeable to the fiscal year in which the travel began. 30 Comp. Gen. 147 (1950).

Other cases involving obligations for travel expenses are: 16 Comp. Gen. 926 (1937); 16 Comp. Gen. 858 (1937); 5 Comp. Gen. 1 (1925); 26 Comp. Dec. 86 (1919); B-134099, December 13, 1957;

A-30477, April 20, 1939; A-75086, July 29, 1936; A-69370, April 10, 1936.

f. State Department: Travel Outside Continental United States

By virtue of 22 U.S.C. $2677, appropriations available to the State Department for travel and transportation outside the continental United States "shall be available for such expenses when any part of such travel or transportation begins in one fiscal year pursuant to travel orders issued in that year, notwithstanding the fact that such travel or transportation may not be completed during that same fiscal year." This provision appeared in appropriation acts starting in 1948 and was subsequently made permanent and codified. It has the effect of excluding State Department travel or transportation outside the continental United States from some of the earlier decisions. The authority is permissive rather than mandatory. 42 Comp. Gen. 699 (1963).

Section 2677 applies to temporary duty travel as well as travel incident to change of duty station. 71 Comp. Gen. _ (B-246702, August 6, 1992). In either case, expenses are chargeable to the year in which the travel is ordered as long as some travel-related expense is also incurred in that year, even though the physical travel may not begin until the following year. Id. Travel-related expenses in this context include miscellaneous incidental expenses such as inoculations and passports as long as they are not incurred at a time so far removed from the actual travel as to question their legitimacy as incident to the travel. 30 Comp. Gen. 25 (1950). The statute also permits charging the prior year for expenses incurred under amended travel orders issued in the subsequent fiscal year as long as some part of the travel or transportation began in the prior fiscal year. 29 Comp. Gen. 142 (1949).

The statute does not permit retroactive charging of an expired appropriation. Thus, the Comptroller General found it improper to issue a travel authorization in one fiscal year designating the succeeding fiscal year as the appropriation to be charged, and then, at the start of the succeeding fiscal year, cancel the authorization and replace it with a new authorization retroactively designating the prior year. 42 Comp. Gen. 699 (1963).

g. Employee Transfer/Relocation Costs

A government employee transferred to a new duty station is entitled to various allowances, primarily travel expenses of the employee and his

or her immediate family, and transportation and temporary storage of household goods. 5 U.S.C. $5724. In addition, legislation enacted in 1967, now found at 5 U.S.C. § 5724a, authorized several new types of relocation expenses for transferred employees. Specifically, they are: (1) per diem allowance for employee's immediate family en route between old and new duty station; (2) expenses of one house-hunting trip to new duty station; (3) temporary quarters allowance incident to relocation; (4) certain expenses of real estate transactions incurred as a result of the transfer; and (5) a miscellaneous expense allowance.

The leading case on the obligation of employee transfer expenses is 64 Comp. Gen. 45 (1984). The rule is that "for all [reimbursable] travel and transportation expenses of a transferred employee, the agency should record the obligation against the appropriation current when the employee is issued travel orders." Id. at 48. This treatment applies to expenses stemming from employee transfers; it does not apply to expenses stemming from temporary duty. 70 Comp. Gen. 469 (1991).

The rule of 64 Comp. Gen. 45 applies to obligations for extensions of temporary quarters subsistence expenses–the obligation is chargeable to the year in which the transfer order was issued, 64 Comp. Gen. 901 (1985). It also applies to dislocation allowances payable to members of the armed services incident to a permanent change of station move. 67 Comp. Gen. 474 (1988).

Agencies have discretionary authority under 5 U.S.C. § 5724c to contract with private firms for arranging the purchase of a transferred employee's old residence. Since this service is wholly discretional and in no way an "entitlement," the agency's obligation to a relocation firm stems from its contract with the firm, not from the employee's transfer. Thus, the obligation under one of these arrangements occurs when a purchase order under the contract is awarded. 66 Comp. Gen. 554 (1987). (Since the obligation is evidenced by a written contract, it would be recorded under subsection (a)(l).)

The decision at 64 Comp. Gen. 45 overruled prior inconsistent decisions such as 28 Comp. Gen. 337 (1948) (storage) and B-122358, August 4, 1976 (relocation expenses under 5 U.S.C. § 5724a). In assessing the impact of 64 Comp. Gen. 45, however, care must be taken to determine precisely what has been overruled and what has not. For example, since 64 Comp. Gen. 45 dealt with reimbursable

expenses, prior decisions addressing the transportation of household goods shipped directly by the government presumably remain valid. [18]

Also, 35 Comp. Gen. 183 (1955) should not be regarded as "overruled," notwithstanding language to the contrary in 64 Comp. Gen. 45. There are two reasons for this. First, 35 Comp. Gen. 183 was not limited to employee transfers, but dealt with travel in other contexts as well, situations not involved in the 1984 decision. Second, 35 Comp. Gen. 183 states, at page 185:

"It may be stated, however, that we have no objection to recording tentatively as obligations the estimated cost of transportation to be purchased and reimbursements therefor to be earned, including reimbursements for transportation of household effects, within the current fiscal year at the time the travel orders are actually issued where it is administratively determined desirable in order to avoid certain additional accounting requirements; but all estimated amounts for travel and related expenses so recorded should be adjusted to actual obligations periodically. . . ."

This is not very different from the holding of 64 Comp. Gen. 45.

8. Subsection (a)(8): Public Utilities

Under 31 U.S.C. s 1501(a)(8), a recordable obligation arises when there is documentary evidence of "services provided by public utilities."[19]

Government agencies are not required to enter into contracts with public utilities when charges are based on rates that are freed by regulatory bodies. However, contracts may be used if desired by the utility or the agency. GAO, Policy and Procedures Manual for Guidance of Federal Agencies, title 7,$ 6.2.C.5 (1990).

If there is a contract, monthly estimates of the cost of services to be performed, based on past experience, maybe recorded as obligations. If there is no contract, obligations should be recorded only on the basis of services actually performed. 34 Comp. Gen. 459,462 (1955).

[18] If the government ships the goods, the obligation occurs when a carrier picks up the goods pursuant to a government bill of lading. If separate bills of lading are issued covering different segments of the shipment, each bill of lading is a separate and distinct obligation E.g., 31 Comp. Gen. 471 (1952).

[19] Prior to the 1982 recodification of Title 31, subsection (a)(7) included public utilities as well as employment and travel expenses. The recodification logically separated public utilities into a new subsection since it is unrelated to the other items. Thus, pre-1982 materials refer to eight subsections whereas there are now nine.

A statute relating to obligations for public utility services is 31 U.S.C. § 1308. Under this law, in making payments for telephone services and for services like gas or electricity where the quantity is based on metered readings, the entire payment for a billing period which begins in one fiscal year and ends in another is chargeable to appropriations current at the end of the billing period. If the charge covers several fiscal years, 31 U.S.C. § 1308 does not apply. A charge covering several fiscal years must be prorated so that the charge to any one fiscal year appropriation will not exceed the cost of service for a one-year period ending in that fiscal year. 19 Comp. Gen. 365 (1939). GAO has construed this statute as applicable to teletypewriter services as well. 34 Comp. Gen. 414 (1955).

The General Services Administration is authorized to enter into contracts for public utility services for periods not exceeding 10 years. 40 U.S.C. § 481(a)(3). A contract for the procurement of telephone equipment and related services has been held subject to this provision even where the provider was not a "traditional" form of public utility. 62 Comp. Gen. 569 (1983). Noting that the concept of what constitutes "public utility service" is flexible, the decision emphasized that the nature of the product or service provided rather than the nature of the provider should govern for purposes of 40 U.S.C. § 481(a)(3). 62 Comp. Gen. at 575. The decision also concluded that GSA is not required to obligate the total estimated cost of a multi-year contract under 40 U.S.C. § 481(a)(3), but is required to obligate only its annual costs. Id. at 572, 576.

9. Subsection (a)(9): Other Legal Liabilities

The final standard for recording obligations, 31 U.S.C. § 1501(a)(9), is documentary evidence of any "other legal liability of the Government against an available appropriation or fund."

This is sort of a catch-all category designed to pick up valid obligations which are not covered by subsections (a)(1) through (a)(8). 34 Comp. Gen. 418,424 (1955).

Thus far, the decisions provide very little guidance on the types of situations that might be covered by subsection (a)(9). The few decisions that mention subsection (a)(9) generally cite it in conjunction with one of the other subsections and stop short of a definitive statement as to its independent applicability. See, e.g., 54

Comp. Gen. 962 (1975) (impoundment litigation); B-192511, February 5, 1979 (severance pay plan under 22 U.S.C. § 3968).

Another case, although not specifically citing subsection (a)(9), pointed out a situation that would seemingly qualify under that subsection: estimates of municipal tax liabilities on United States property located in foreign countries, based on tax bills received in prior years. 35 Comp. Gen. 319 (1955).

Thus, subsection (a)(9) must be applied on a case-by-case basis. If a given item is a legal liability of the United States, if appropriations are legally available for the item in terms of purpose and time, and if the item does not fit under any of the other eight subsections, then subsection (a)(9) should be considered.

C. Contingent Liabilities

A "contingent liability" is a potential liability which may become an actual liability if some particular event happens or does not happen. A more formal definition is:

"An existing condition, situation, or set of circumstances involving uncertainty as to a possible loss to an agency that will ultimately be resolved when one or more future events occur or fail to occur."[20]

If and when the contingency materializes, the liability ripens into a recordable obligation. GAO, Policy and Procedures Manual for Guidance of Federal Agencies, title 7, § 3.4.C. See also, e.g., 62 Comp. Gen. 143, 145 (1983).

The contingent liability poses somewhat of a fiscal dilemma. On the one hand, it is by definition not sufficiently definite or certain to support the formal recording of an obligation. Yet on the other hand, sound financial management, as well as Antideficiency Act considerations, dictates that it somehow be recognized. The middle ground between recording an obligation and doing nothing is the "administrative reservation" or "commitment" of funds.[21] Reserves for contingencies are recognized in both the Antideficiency Act (31 U.S.C. § 1512(c)) and the Impoundment Control Act (2 U.S.C. § 684(b)). Also, a contingent liability which is less than an obligation

[20] GAO Glossary of Terms Used in the Federal Budget process, PAD-81-27, at 86.

[21] See 7 GAO-PPM § 3.4.E; B-238201, April 15, 1991 (non-decision letter).

but nevertheless sufficiently important to warrant recognition should be reflected in a footnote to pertinent financial statements. See 37 Comp. Gen. 691,692 (1958); see also 62 Comp. Gen. 143, 146 (1983).

The treatment of contingent liabilities is largely a matter of sound judgment. "No hard and fast rule can be laid down as to the circumstances that would require disclosure. Judgment would have to be exercised with respect to the possible financial implications." 37 Comp. Gen. at 694. The general question to ask in this context is whether a given situation is sufficiently probable to justify recognition or is little more than a mere possibility. Some guidance maybe found in GAO's Accounting Principles and Standards,[22] and in 37 Comp. Gen. 691.

One example of a contingent liability which should be recognized is a pending claim under the "changed conditions" clause of a contract. 37 Comp. Gen. 691 (1958). It is not a recordable obligation until adjudicated and allowed. Another is an authorized indemnification provision limited to appropriations available at the time of a loss. 54 Comp. Gen. 824, 826–27 (1975), overruling in part 42 Comp. Gen. 708 (1963) to the extent the latter decision held establishment of a reserve unnecessary.

Termination liability under a renewal option or similar contract is another type of contingent liability. As a general proposition, "an amount equal to the maximum contingent liability of the Government [must be] always available for obligation from appropriations current at the time the contract is made and at the time renewals thereof are made." 37 Comp. Gen. 155, 160 (1957). See also 43 Comp. Gen. 657 (1964); 8 Comp. Gen. 654 (1929). In some circumstances, GAO has held that termination liability amounts to an actual obligation. 62 Comp. Gen. 143 (1983); B-238581, October 31, 1990.

Obligating funds for potential termination liability can tie up large sums for a long period of time. Administrative reservation is also an imperfect solution because the reserved funds may have to give way to higher priority items as the fiscal year progresses. Also, reservation does not preserve the funds beyond their period of availability and has

[22]GAO, Policy and Procedures Manual for Guidance of Federal Agencies, title 2, Appendix I, § C50 (1984).

to be repeated each fiscal year. Congress in several instances has provided for varying forms of alternative treatment of termination liability. See 51 Comp. Gen. 598,604 (1972); B-I 74839, March .20, 1984; B-159141, August 18, 1967; B-1 12131, July 27, 1953.

D. Reporting Requirements

When 31 U.S.C. § 1501 was originally enacted in 1954, it required each agency to prepare a report each year on the unliquidated obligations and unobligated balance for each appropriation or fund under the agency's control. The reports were to be submitted to the Senate and House Appropriations Committees, the (then) Bureau of the Budget, and GAO. GAO was often asked by the appropriations committees to review these reports.

After several years of reviewing reports, the appropriations committees determined that the requirement had served its purpose, and Congress amended the law in 1959 to revise and relax the reporting procedures. The current reporting requirements are found at 31 U.S.C. §§ 1108(c) and 1501(b).

Under 31 U.S.C. § 1108(c), each agency, when submitting requests for appropriations to the Office of Management and Budget, must report that "the statement of obligations submitted with the request contains obligations consistent with section 1501 of this title." See 39 Comp. Gen. 422,425 (1959). Implementing instructions are contained in OMB Circular No. A-11 (Preparation and Submission of Budget Estimates), $11.7. The reports must be certified by officials designated by the agency head. The certification must be supported by adequate records, and the agency must retain the records and certifications in such form as to facilitate audit and reconciliation. Officials designated to make the certifications may not redelegate the responsibility.[23]

The conference report on the original enactment of 31 U.S.C. § 1501 specified that the officials designated to make the certifications should be persons with overall responsibility for the recording of obligations, and "in no event should the designation be below the level

[23]Sample certification statements may be found in OMB Circular No. A-11, 611.7, and GAO's Policy and Procedures Manual for Guidance of Federal Agencies, title 7, § 3.8.A.

of the chief accounting officer of a major bureau, service, or constituent organizational unit."[24]

The person who makes certifications under 31 U.S.C. §1108(c) is not a "certifying officer" for purposes of personal accountability for the funds in question. Although he or she may be coincidentally an "authorized certifying officer," the two functions are legally separate and distinct. B-197559-O.M., May 13, 1980.

The statute does not require 100 percent verification of unliquidated obligations prior to certification. Agencies may use statistical sampling. B-199967 -O. M., December 3, 1980.

In the case of transfer appropriation accounts under interagency agreements, the certification official of the spending agency must make the certifications to the head of the advancing agency and not to the head of the spending agency. GAO, Policy and Procedures Manual for Guidance of Federal Agencies, title 7. § 3.8.A.

Finally, 31 U.S.C. §1501(b) provides that any statement of obligations furnished by any agency to the Congress or to any congressional committee "shall include only those amounts that are obligations consistent with subsection (a) of this section. "

E. Deobligation

The definition of the term "deobligation" is a "downward adjustment of previously recorded obligations."[25] Deobligations occur for a variety of reasons. Examples are:

- Liquidation in amount less than amount of original obligation. E.g., B-207433, September 16, 1983 (cost underrun); B-183184, May 30, 1975 (agency called for less work than maximum provided under level-of-effort contract).
- Cancellation of projector contract.
- Initial obligation determined to be invalid.

[24] H.R. Rep. No. 2663, 83d Cong., 2d Sess. 18 (1954), quoted in Financial Management in the Federal Government, S. Dec. No. 11, 87th Gong., 1st Sess. 88 (1961), and in 50 Comp. Gen. 857,862 (1971).

[25] GAO, Glossary of Terms Used in the Federal Budget Process, PAD-81-27, at 56.

- Reduction of previously recorded estimate.
- Correction of bookkeeping errors or duplicate obligations.

In addition, deobligation maybe statutorily required in some instances. An example is 31 U.S.C. § 1535(d), requiring deobligation of appropriations obligated under an Economy Act agreement to the extent the performing agency has not incurred valid obligations under the agreement by the end of the fiscal year.

For the most part, there are no special rules relating to deobligation. Rather, the treatment of deobligations follows logically from the principles previously discussed in this and preceding chapters. Thus–

- Funds deobligated within the original period of obligational availability are once again available for new obligations just as if they had never been obligated in the first place. Naturally, any new obligations are subject to the purpose, time, and amount restrictions governing the source appropriation.
- Funds deobligated after the expiration of the original period of obligational availability are not available for new obligations. 64 Comp. Gen. 410 (1985); 52 Comp. Gen. 179 (1972). They maybe retained as unobligated balances in the expired account until the account is closed, however, and are available for adjustments in accordance with 31 U.S.C. § 1553(a), as amended by Pub. L. No. 101-510,$1404 (1990).

A proper and unliquidated obligation should not be deobligated unless there is some valid reason for doing so. Absent a valid reason, it is improper to deobligate funds solely to "free them up" for new obligations. To do so risks violating the Antideficiency Act. For example, where a government check issued in payment of some valid obligation cannot be promptly negotiated (if, for example, it is returned as undeliverable), it is improper to deobligate the funds and use them for new obligations. 15 Comp. Gen. 489 (1935); A-44024, September 21, 1942. (The two cited decisions deal with provisions of law which have since changed, but the thrust of the decisions remains the same.) The Antideficiency Act violation would occur if the payee of the original check subsequently shows up and demands payment but the funds are no longer available because they have been reobligated and the account contains insufficient funds.

Under some programs, an agency provides funds to an intermediary which in turn distributes the funds to members of a class of beneficiaries. The agency records the obligation when it provides, or legally commits itself to provide, the funds to the intermediary. It is undesirable for many reasons to permit the intermediary to hold the funds indefinitely prior to reallocation. Unless the program Legislation provides otherwise, the agency may establish a reasonable cutoff date at which time unused funds in the hands of the intermediary are "recaptured" by the agency and deobligated. GAO recommended such a course of action in 50 Comp. Gen. 857 (1971). If recapture occurs during the period of availability, the funds maybe reobligated for program purposes; if it occurs after the period of availability has ended, the funds expire absent some contrary direction in the governing legislation. Id.; Dabney v. Reagan, No. 82 Civ. 2231-CSH (S.D.N.Y. March 21, 1985).

Congress may occasionally by statute authorize an agency to reobligate deobligated funds after expiration of the original period of availability. This is called "deobligation-reobligation" (or "deob-reob") authority. Such authority exists only when expressly granted by statute. Deobligation-reobligation authority generally contemplates that funds will be deobligated only when the original obligation ceases to exist and not as a device to effectively augment the appropriation. See B-173240-O. M., January 23, 1973. Also, absent statutory authority to the contrary, "deob-reob" authority applies only to obligations and not to expenditures. Thus, repayments to an appropriation after expiration of the original period of obligational availability are not available for reobligation. B-121836, April 22, 1955.